ANSI/UL 1559—Insect-Control Equipment, Electrocution Type
ANSI/UL 1561—Large General Purpose Transformers
UL 1562—Transformers, Distribution, Dry Type—Over 600 Volts
ANSI/UL 1563—Electric Hot Tubs, Spas, and Associated Equipment
ANSI/UL 1564—Industrial Battery Chargers
ANSI/UL 1565—Wire Positioning Devices
UL 1567—Receptacles and Switches Intended for Use With Aluminum Wire
ANSI/UL 1569—Metal-Clad Cables
ANSI/UL 1570—Fluorescent Lighting Fixtures
ANSI/UL 1571—Incandescent Lighting Fixtures
ANSI/UL 1572—High Intensity Discharge Lighting Fixtures
ANSI/UL 1573—Stage and Studio Lighting Units
ANSI/UL 1574—Track Lighting Systems
ANSI/UL 1577—Optical Isolators
ANSI/UL 1585—Class 2 and Class 3 Transformers
UL 1594—Sewing and Cutting Machines
UL 1604—Electrical Equipment for Use in Class I and II, Division 2 and Class III Hazardous (Classified) Locations
ANSI/UL 1610—Central-Station Burglar-Alarm Units
ANSI/UL 1624—Light Industrial and Fixed Electric Tools
ANSI/UL 1635—Digital Burglar Alarm Communicator System Units
ANSI/UL 1638—Visual Signaling Appliances
ANSI/UL 1647—Motor-Operated Massage and Exercise Machines
UL 1660—Liquid-Tight Flexible Nonmetallic Conduit
ANSI/UL 1662—Electric Chain Saws
ANSI/UL 1664—Immersion-Detection Circuit-Interrupters
ANSI/UL 1666—Standard Test for Flame Propagation Height of Electrical and Optical-Fiber Cables Installed Vertically in Shafts
UL 1673—Electric Space Heating Cables
UL 1676—Discharge Path Resistors
ANSI/UL 1703—Flat Plate Photo Voltaic Modules and Panels
ANSI/UL 1711—Amplifiers for Fire Protective Signaling Systems
ANSI/UL 1726—Automatic Drain Valves for Standpipe Systems
ANSI/UL 1727—Commercial Electric Personal Grooming Appliances
UL 1738—Venting Systems for Gas-Burning Appliances, Categories II, III, and IV
ANSI/UL 1739—Pilot-Operated Pressure-Control Valves for Fire-Protection Service
UL 1767—Early-Suppression Fast-Response Sprinklers
ANSI/UL 1769—Cylinder Valves
ANSI/UL 1773—Termination Boxes
UL 1776—High-Pressure Cleaning Machines
UL 1778—Uninterruptible Power Supply Equipment
ANSI/UL 1786—Nightlights
UL 1795—Hydromassage Bathtubs
UL 1812—Ducted Heat Recovery Ventilators
UL 1815—Nonducted Heat Recovery Ventilators
UL 1863—Communication Circuit Accessories
ANSI/UL 1876—Isolating Signal and Feedback Transformers for Use in Electronic Equipment
UL 1917—Solid-State Fan Speed Controls
UL 1950—Information Technology Equipment Including Electrical Business Equipment
UL 1995—Heating and Cooling Equipment
UL 2006—Halon 1211 Recovery/Recharge Equipment
UL 2097—Reference Standard for Double Insulation Systems for Use in Electronic Equipment

Underwriters Laboratories, Inc. must also abide by the following conditions of its recognition, in addition to those already required by 29 CFR 1910.7:

The Occupational Safety and Health Administration shall be allowed access to UL's facilities and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If UL has reason to doubt the efficacy of any test standard it is using under this program, it shall promptly inform the organization that developed the test standard of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

UL shall not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, UL agrees that it will allow no representation that it is either a recognized or accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

UL shall inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, including details;

UL will continue to meet the requirements for recognition in all areas where it has been recognized; and

UL will always cooperate with OSHA to assure with the letter as well as the spirit of its recognition and 29 CFR 1910.7.

Effective Date: This recognition will become effective on June 29, 1995, and will be valid for a period of five years from that date, until June 29, 2000, unless terminated prior to that date, in accordance with 29 CFR 1910.7.

Signed at Washington, DC, this 26th day of June, 1995.

Joseph A. Dear,

Assistant Secretary.

[FR Doc. 95–16062 Filed 6–28–95; 8:45 am]

BILLING CODE 4510–26–P

Pension and Welfare Benefits Administration

[Application No. D–09582, et al.]

Proposed Exemptions; Retirement Plan for Employees of United Jewish Appeal-Federation of Jewish Philanthropies of New York and Affiliated Agencies and Institutions (the Plan)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Retirement Plan for Employees of United Jewish Appeal-Federation of Jewish Philanthropies of New York, Inc. and Affiliated Agencies and Institutions (the Plan) Located in New York, New York

[Application No. D–09582]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990.) If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply effective May 29, 1990, to the past purchase and sale of certain securities (the Securities) on May 29, 1990, between the Plan and the endowment fund (the Fund) of the United Jewish Appeal-Federation of Jewish Philanthropies of New York, Inc. (the Federation), a sponsor of the Plan and a party in interest with respect to the Plan; provided that the following conditions are satisfied:

(a) The transfer of the Securities was a one-time cash transaction;

(b) The transaction was at fair market value as determined by the closing prices on May 25, 1990, on the New York Stock Exchange (NYSE) and the American Stock Exchange (AMEX);

(c) The Plan paid no commissions with respect to the transaction;

(d) The Federation determined upon consultation with Delaware Investment Advisors (Delaware) to engage in the transaction;

(e) The Securities transferred from the Fund to the Plan were all listed on either the NYSE or AMEX, and constituted exactly a 50% pro rata share of all the securities then owned by the Fund; and

(f) Over a three plan year period, the Federation will contribute $513,009.39 to the Plan to make up the loss sustained by the Plan when the Securities were sold out of the Plan portfolio.

EFFECTIVE DATE: If granted this exemption will be effective as of May 29, 1990.

Summary of Facts and Representations

1. The Plan is a defined benefit multiple employer plan. As of September 30, 1993, the Plan had $76,919,425 million in net assets, and as of October 1, 1994, the Plan had approximately 5634 participants. Chemical Bank (formerly Manufacturers Hanover Trust Company) is the Plan's trustee.

2. The Federation is a not-for-profit corporation which is exempt from federal tax under section 501(c)(3) of the Code. The Federation is a private, local voluntary human service organization. The Fund is a special general asset account of the Federation.[1]

3. The investment committee (the Investment Committee) of the Federation appoints investment managers to manage the Fund's and the Plan's assets. The members of the Investment Committee are appointed by the Board of Directors of the Federation. Delaware Investment Advisors (Delaware), a division of Delaware Management Company Inc., served as an investment manager for the Fund from 1983 through January of 1993, and managed the Fund's assets of approximately $30 million. Fiduciary Trust Co. was the custodian for this account.

4. The applicant represents that early in 1990, the Investment Committee decided that it wanted to hire Delaware to replace another investment manager, Delphi Management (Delphi), with respect to the management of approximately $10 million of the Plan's assets. At that time, the Investment Committee also determined that the total amount of the Federation related assets, including the assets of the Plan and the Fund, managed by any one investment manager should be limited. This would limit the risk to the portfolios of the Fund and the Plan and further protect the Federation, which as the Plan sponsor was ultimately responsible for any losses to the Plan. Because Delaware was already managing a desired maximum level of the Fund's assets, it was determined that one half of this desired maximum should be managed by Delaware for the Plan and one half managed by Delaware for the Fund. Fees charged by Delaware for its investment management services consisted of an annual charge (billed in quarterly installments) based upon the amount of assets under management.

5. In April of 1990, James L. Rothkopf (Mr. Rothkopf), the chief financial officer of the Federation, informed Delaware that the Investment Committee wanted a portion of the Plan's assets at that time managed by Delphi, to be invested with Delaware. Mr. Rothkopf also indicated that to keep the total Federation related assets under Delaware management at the same level, the Fund investment with Delaware would be reduced to one-half the previous level and that one-half of the Fund's investments would be transferred pro-rata to the Plan portfolio. Delaware indicated to the Investment Committee that it wanted the Plan's portfolio to be virtually identical to the Fund's portfolio.

6. The purchase of Securities by the Plan from the Fund took place on May 29, 1990, at the direction of the Assistant Comptroller of the Federation. In order to accomplish the prescribed allocation, and to avoid the Plan paying any commissions on the acquisition of the Securities, approximately fifty percent (50%) of the amount of each Security held in the Fund portfolio was transferred from Fiduciary Trust Co., custodian for the Fund, into the Plan account at Manufacturers Hanover Trust Company, the custodian of the Plan's assets, and cash representing the fair market value of these Securities ($10,577,756.77) was transferred to a portion of the Fund asset portfolio not

[1] The Federation's consolidated assets are composed of amounts received from donor-created endowments and funds designated by the Federation's Board of Directors to provide for the Federation's long-term needs.

managed by Delaware. All the Securities involved in the transaction were securities of companies listed on the NYSE, with the exception of one Security listed on the AMEX. The fair market value of the Securities was determined by using the exchanges' closing prices on Friday, May 25, 1990. It is represented that the Plan did not pay any fees related to the subject transaction.

7. The applicant represents that the actual transfer of the Securities took place on Tuesday, May 29, 1990, because the prior business day Monday, May 28 was a legal holiday and therefore, there was no trading. The applicant represents that the closing price of the Securities on Friday, May 25, 1990, was effectively equal to the opening price of the Securities on Tuesday, May 29, 1990. Upon completion of the transaction, the Plan held legal title to the Securities acquired from the Fund. It is represented that at the time of the transfer, approximately 17% of the Plan's assets were involved in the transaction.

8. Delaware represents that the Federation consummated the transaction upon facilitation by Delaware and approved the transfer of the Securities from the Fund to the Plan. In an affidavit submitted to the Department, Mr. Rothkopf of the Federation stated that Mr. Marion Dixon, a former money manager with Delaware who was responsible for the Fund portfolio and subsequently for the Plan portfolio, advised him that the initial Plan portfolio should represent 50 percent (50%) of the existing Fund portfolio. This would enable the Fund and the Plan to have identical investment portfolios, thereby achieving the portfolio structures desired by Mr. Dixon, and would also save brokerage commissions. Delaware represents that Mr. Dixon agreed that the initial portfolio for the Plan should contain substantially the same securities as were in the Fund portfolio at that time. Delaware represents that they were of the opinion then, as well as now, that the transfer transaction was in the best interest and protective of the Plan.

9. The applicant states that between June 1990 and January 1993, Delaware sold all the Securities purchased by the Plan in the transaction subject to this exemption request. The determination of gains and losses on the sale of the Securities by the Plan was calculated on a ''first in first out'' basis. The total difference between the aggregate purchase price of the Securities by the Plan and the aggregate sale price of the Securities by the Plan, was an aggregate loss of $513,009.39. The applicant maintains that the Plan portfolio was a managed portfolio with transactions not necessarily based on individual stock profit or loss positions, but based on the portfolio's desired position. As such, stock was sold for a number of reasons, including availability of stock with a better return potential or less downside risk, diversity, cyclical markets, and a variety of other factors. In this regard, stocks were often sold prior to a profit realization because preferable alternative investments were available or concentrations of stock needed to be changed. However, the applicant represents that the Federation is now prepared to contribute to the Plan an amount equal to $513,009.39 over a three plan year period (the Contribution), in order to make up for the loss to the Plan. The Contribution will be made at the same time that the last installment of each annual contribution is made to the Plan for the applicable plan year.

10. The applicant represents that subsequent to the transaction, both the Plan and the Federation were audited by a ''Big Six'' accounting firm, and the transaction was not identified by the auditors as being prohibited during either audit. In the summer of 1993, counsel for the Federation contacted the law firm of Proskauer Rose Goetz & Mendelson [2] (PRG&M) to discuss the Fund's and the Plan's claims in a class action settlement against the issuer of one of the Securities involved in the subject transaction. When the facts of the transaction surfaced in the discussion, it was questioned whether a prohibited transaction had occurred as a result of the Plan's purchase of the Securities from the Fund. PRG&M then commenced an investigation of the facts surrounding the transaction and the ERISA provisions involved. The applicant then filed an exemption request in this matter.

11. The applicant has requested retroactive relief for the transaction which occurred on May 29, 1990, noting, among other things that: (1) The transaction was a one-time transfer of the Securities for cash; (2) the transaction was in the interest and protective of the Plan because the Plan was able to acquire the Securities at fair market value and not pay any commissions; and (3) the Securities represented a well-diversified portfolio of stock of recognized companies.

12. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) The transfer of the Securities was a one-time cash transaction;

(b) The transaction was at fair market value as evidenced by the closing prices on May 25, 1990 on the NYSE and the AMEX;

(c) The Plan paid no commissions with respect to the transaction;

(d) The Federation determined upon consultation with Delaware to engage in the transaction;

(e) The Securities transferred from the Fund to the Plan were all listed on either the NYSE or AMEX and constituted exactly a 50% pro rata share of all the securities then owned by the Fund; and

(f) Over a three plan year period, the Federation will contribute $513,009.39 to the Plan to make up the loss sustained by the Plan when the Securities were sold out of the Plan portfolio.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department at (202) 219–8883. (This is not a toll-free number.)

General Motors Hourly-Rate Employes Pension Plan, General Motors Retirement Program for Salaried Employees (the Salaried Plan), Saturn Individual Retirement Plan for Represented Team Members, Saturn Personal Choices Retirement Plan for Non-Represented Team Members, and Employees' Retirement Plan for GMAC Mortgage Corporation (collectively, the Plans) Located in New York, New York

[Application Nos. D–09859 through D–09863]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, effective April 9, 1994, to the acquisition by the Plans of limited partnership interests (the Interests) in APA Excelsior III, L.P. from Metropolitan Life Insurance Company (Metropolitan), a party in interest with respect to the Plans; provided that the following conditions are satisfied:

(A) All terms and conditions of the transaction were at least as favorable to the Plans as those which the Plans

[2] This law firm was not counsel to the Federation nor the Plan at the time of the transaction.

could obtain in an arm's-length transaction with an unrelated party;

(B) Metropolitan is not, and has not been, a fiduciary with respect to any assets of the Plans involved in the transaction;

(C) The transaction was a one-time transaction for cash in which the purchase price did not exceed the fair market value of the Interests;

(D) The methodology for determining the fair market value of the Interests was in accordance with standards maintained by professional venture capital valuation specialists for the valuation of limited partnership interests in venture capital partnerships; and

(E) Metropolitan did not participate in the Plans' determination of the fair market value of the Interests.

EFFECTIVE DATE: This exemption, if granted, will be effective as of April 9, 1994.

Summary of Facts and Representations

Introduction: In April 1994, the Plans acquired limited partnership interests (the Interests) in A.P. Excelsior III, Limited Partnership (the Partnership) from Metropolitan Life Insurance Company (Metropolitan). This transaction occurred without a determination having been made that Metropolitan was a party in interest with respect to the Plans. Subsequently, the parties discovered that the entity from which the Plan acquired the Interests, Metropolitan, is a service-provider party in interest with respect to certain of the Plans, and an exemption is now requested for the Plans' past acquisition of the Interests from Metropolitan, under the terms and conditions described herein.

1. The Plans are defined benefit and defined contribution employee benefit plans maintained by General Motors Corporation and its affiliates (GM), with approximately 831,530 participants as of October 1, 1994. The approximate fair market value of the total assets of the Plans as of May 31, 1994 was $41 billion. The assets of the Plans are maintained in two trusts (the Plans' Trusts): The General Motors Salaried Employees Pension Trust, which holds the assets of the Salaried Plan, and the General Motors Hourly-Rate Employees Pension Trust, which holds the assets of the other four Plans. The named fiduciary with respect to each Plan is the Finance Committee of the board of directors of GM (the Finance Committee).

2. The Finance Committee has delegated certain fiduciary responsibilities to the Pension Investment Committee (the PIC), including the responsibility for allocating funds among asset classes in accordance with broad investment guidelines established by the Finance Committee and overseeing in-house investing for a portion of the assets of the trusts which fund the Plans. The PIC is comprised of executive officers of GM. The PIC carries out its investment oversight responsibility through the General Motors Investment Management Corporation (GMIMCO), a registered investment adviser under the Investment Advisers Act of 1940, as amended. Certain members of the PIC serve on the board of directors of GMIMCO. The Finance Committee reviews the actions of the PIC and GMIMCO on a periodic basis to evaluate performance and to assure that the Finance Committee's delegation of authority continues to be prudent.

3. GMIMCO is involved in all aspects of the management of the Plans' assets, and its functions with respect to the Plans' involvement in private market transactions are executed by its private market investments staff (PMI Staff). The PMI Staff consists of twelve professionals (the PMI Staff) who research, document and negotiate private market transactions on behalf of the Plans, with the assistance of GMIMCO's legal staff. Under current procedures, all private market transactions subject to final approval by GM's in-house investment management function are directed to the PMI Staff for review, analysis and, if needed development. After an investment has been reviewed, analyzed and favorably approved by the PMI Staff, the additional levels of approval required for authorization of the investment depends upon the amount of the investment. Final approval authority for private market transactions rests with the PIC, for investments of amounts of $75 million and under, and the Finance Committee, for investments of amounts over $75 million. The PIC's final approval authority for the investment of amounts of $30 million or less is exercised by a special PIC subgroup, the Private Investment Review Team (the PIRT).

4. The current assets of the Plans under the authority of the PIC include the Plans' Trusts' interests in the First Plaza Group Trust (First Plaza). First Plaza, which invests solely in private market investments, is a group trust maintained by GM on behalf of the Plans' Trusts, each of which owns approximately 50 percent. The trustee of First Plaza is Mellon Bank, N.A. (Mellon Bank). On April 19, 1994, pursuant to the direction of the PIC and GMIMCO, First Plaza invested $2,465,784 in the APA Excelsior III, L.P. (the Partnership) by purchasing limited partnership interests (the Interests) from Metropolitan Life Insurance Company (Metropolitan). The Interests purchased by the Plan represent 4.2 percent of the Partnership's total limited partnership interests. The Partnership is a venture capital operating company, the purpose of which is to generate long-term capital appreciation by acquiring a broad portfolio of equity-oriented investment positions in quoted and nonquoted companies in a variety of industries in the United States. As a result of such purchase, First Plaza succeeded to the obligation to make additional capital contributions of $1,150,000 to the Partnership. GM represents that the Interests represent a total capital contributions commitment of $5 million to the Partnership, $3,850,000 of which had been paid by Metropolitan prior to First Plaza's purchase of the Interests. GM states that the difference between the $2,465,784 paid for the Interests by First Plaza and the $3,850,000 invested in the Interests by Metropolitan represents (a) distributions Metropolitan had already received from the Partnership, and (b) a discount negotiated by GMIMCO on behalf of First Plaza. GM represents that in June 1994, the PIC and GMIMCO and Metropolitan became aware that the transaction was a prohibited transaction under the Act, due to the fact that Metropolitan is a service-provider party in interest with respect to the Plans. The PIC and GMIMCO are requesting an exemption for the Plans' past purchase of the Interests from Metropolitan, effective April 9, 1994, under the terms and conditions described herein.

5. Metropolitan is a mutual life insurance company organized under the laws of the state of New York, with total assets under management of approximately $163.4 billion as of December 31, 1993. Metropolitan represents that it offers a wide variety of insurance products, asset management and administrative services for thousands of employee benefit plans subject to the Act. GM and Metropolitan represent that Metropolitan is totally independent from GM, except as provider to the Plans of services which are not involved in the subject transaction. GM represents that Metropolitan's services to the Plans are described as follows:

(a) In 1940, the General Motors Retirement Program for Salaried Employee's was funded by a deferred group annuity contract under which annuities were purchased from Metropolitan and other insurance companies. Effective January 1, 1977,

the funding under the deferred group annuity was changed to a deposit administration contract with immediate participation guarantee. It remains in effect but no additional funds have been deposited in the contract since 1985.

(b) Metropolitan coordinates the transfer of all insured after-tax employee contributions to the Plans' trustee for distribution upon a Plan participant's retirement.

(c) Since 1988, Metropolitan has served as recordkeeper under the Saturn Individual Retirement Plan for Represented Team Members and, upon request, provides annuities with respect to employee contributions under the Saturn Personal Choices Retirement Plan for Non-Represented Team Members.

GM represents that neither Metropolitan nor any of its affiliates is a fiduciary with respect to any of the Plans' assets which were used to purchase the Interests or any assets to be used to pay the remaining capital contributions with respect to the Interests. Metropolitan represents that it maintains procedures for determining whether a proposed transaction is prohibited under the Act, and that such procedures were inadvertently not utilized in advance of the subject transaction.

6. GM and Metropolitan represent that the transaction was negotiated at arm's length and in good faith upon the mistaken assumption that Metropolitan was not a party in interest with respect to the Plans, and, accordingly, that the parties were unaware that the transaction with First Plaza was prohibited under section 406(a) of the Act. GM represents that the PIC and GMIMCO maintain comprehensive and up-to-date lists of parties in interest with respect to the Plans in order to guard against inadvertent party in interest transactions, and that Metropolitan was reflected in such lists due to its holding and investment of employee after-tax contributions under the Plans under both separate account and general account arrangements. GM maintains that, as with all investments directed by the PIC and GMIMCO, the normal due diligence procedures were followed. GM notes that the investment contracts with Metropolitan were entered into almost 50 years ago and are not administered by the PMI Staff, which effected the purchase of the Interests from Metropolitan. As a result, Metropolitan was not recognized by the PMI Staff as a party in interest, and the PMI staff did not refer to the party in interest list in advance of the transaction. GM also notes that the current party in interest list indicates 1,375 entities which are parties in interest with respect to the Plans. GM represents that the staffs and attorneys of the PIC and GMIMCO and the PIRT each believed that another responsible party had reviewed the party in interest list as the transaction proceeded.

7. GM represents that the potential purchase of the Interests by First Plaza was an opportunity which was brought to the PMI Staff by the general partner of the Partnership, and not by Metropolitan. GM states that this recommendation was subject to the same thorough investigation and analysis by the PMI Staff as any other private market transaction proposed for the Plans. GM represents that all aspects of the investment analysis, the determination and negotiation of the purchase, and the continued monitoring of the investment have proceeded strictly in accordance with the procedures which the PIC and GMIMCO maintain to ensure that such investments meet the Plans' investment criteria and do not subject the Plans to any unnecessary risk.

8. *Valuation of the Interests:* GM represents that the purchase price paid for the Interests was not in excess of the fair market value of the Interests as of the sale date, as determined by GMIMCO's PMI Staff contemporaneously with the transaction. In this regard, GM represents that the PMI Staff utilized the valuation methodology utilized by GMIMCO in any transaction requiring the calculation of the fair market value of interests in a venture capital fund. GM describes the method of determining the fair market value of the Interests as follows:

The PMI Staff requested and received from the general partner of the Partnership (the General Partner) the most recent statement of the value of Metropolitan's capital account in the Partnership. The PMI Staff adjusted this value by adding all drawdowns to the Partnership by Metropolitan, and subtracting all distributions from the Partnership to Metropolitan, since the date of the statement. Each public company in the Partnership's portfolio was valued using the latest available public market value, and then an appropriate liquidity discount was taken. The specific discount rate applied to each such portfolio company depended on how soon it was then anticipated that its security would be distributed from the Partnership to the limited partners.

The PMI Staff requested and received information from the General Partner regarding the private (i.e. non-publicly-traded) investments in the Partnership. Using this information and other information which the PMI Staff was able to obtain from other sources, the private investments in the Partnership's portfolio were valued by the PMI Staff. In valuing each such company, the PMI Staff elected to use conservative standards and, in fact, valued some companies at zero, not because that was the actual value, but because there was not enough information available at that time to make a reasonable determination of fair market value. GM represents that such ''zero valuation'' is standard practice of financial analysis in the venture capital industry.

With respect to the Partnership's holdings of interests in publicly-traded companies and those non-public companies for which significant financial performance information was available, the PMI Staff projected what each company would be worth in the future and then discounted that amount back to the present using an appropriate discount rate. The future projections were based on the PMI Staff's knowledge of each particular company, including projected cash flow of the company, probability of when and if the company would be going public, the company's business plan, the anticipated timing of distribution of a company's securities after the company has gone public or the sale proceeds from the sale of the company to a third party, and information regarding the General Partner.

After determining the discounted values of the portfolio companies and the adjusted book value of the Partnership's limited partnership interests, the PMI Staff entered into negotiations with Metropolitan which resulted in a purchase price which was not more than the PMI Staff's determination of the fair market value of the Interests.

9. GM represents that the process and methodology utilized by the PMI Staff, described above, reflects the venture capital industry standards for evaluation. Specifically, GM states that GMIMCO developed this methodology in consultations with two widely-known sponsors of venture capital funds, Brinson Partners, Inc. (Brinson) and Chancellor Capital Management, Inc., each of which uses the same methodology when purchasing limited partnership interests in the secondary market. Brinson, a registered investment adviser which maintains a fund investing solely in limited partnership interests sold on the secondary market, has reviewed and evaluated the methodology utilized by the PMI Staff in determining the fair market value of the Interests for purposes of First Plaza's

purchase of the Interests from Metropolitan. Brinson represents that the methodology used by the PMI Staff was appropriate and reasonable, and that this conclusion is based on Brinson's experience as a seasoned long-term venture capital and secondary partnership investor. GM represents that at no time was Metropolitan a part of the process by which the PMI Staff determined the fair market value of the Interests.

10. In summary, the applicants represent that the criteria of section 408(a) of the Act are satisfied in the subject transaction for the following reasons: (1) The transaction was a one-time transaction for cash; (2) Metropolitan was not and is not a fiduciary with respect to any assets involved in the transaction; (3) The purchase price did not exceed the Interests' fair market value, as determined by the PMI Staff; (4) The fair market value of the Interests was determined by the PMI Staff according to GMIMCO's standard procedures for valuation of interests in venture capital funds; and (5) Brinson determined that the methodology utilized by the PMI Staff in determining the Interests' fair market value was appropriate and reasonable.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

First and Farmers Bank of Somerset, Inc. (the Bank) Located in Somerset, Kentucky

[Application Numbers D–09921 through D–09926]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply, as of April 25, 1995, to the cash sale of certain collateralized mortgage obligations (CMOs) held by six employee benefit plans for which the Bank acts as trustee (the Plans) to the Bank, a party in interest with respect to the Plans.

This proposed exemption is subject to the following conditions: (1) Each sale was a one-time transaction for cash; (2) Each Plan received an amount that was equal to the greater of: (a) the outstanding principal balance for each CMO owned by the Plans, plus accrued but unpaid interest, at the time of the sale, (b) the amortized cost for each CMO owned by the Plans, plus accrued but unpaid interest, as determined by the Bank on the date of the sale; or (c) the fair market value of each CMO owned by the Plans as determined by the Bank on the basis of reasonable inquiry from at least three sources that are broker-dealers or pricing services independent of the Bank at the time of the sale; (3) The Plans did not pay any commissions or other expenses with respect to the sale; (4) The Bank, as trustee of the Plans, determined that the sale of the CMOs is in the best interests of each of the Plans and their participants and beneficiaries at the time of the transaction; (5) The Bank took all appropriate actions necessary to safeguard the interests of the Plans and their participants and beneficiaries in connection with the transactions; and (6) Each Plan received a reasonable rate of return on the CMOs during the period of time that it held the CMOs.

EFFECTIVE DATE: If granted, this proposed exemption would be effective April 25, 1995.

Summary of Facts and Representations

1. The Bank is a Kentucky chartered commercial bank that was organized in November of 1870. First and Farmers Bancshares, Inc., a one-bank holding company incorporated in Kentucky in 1983, owns 80.43 percent of the Bank. The Bank offers the traditional services of a community bank (e.g., checking, savings, loans and trusts) to both individuals and entities in the Somerset area. The Bank serves as trustee of the Plans and has investment discretion with respect to the assets of the Plans.

The Plans are the Adams and Adams Keogh Retirement Plan (the Adams Plan); the Lake Cumberland Home Health Agency Employee Retirement Plan (the Lake Plan); the Bank of Cumberland Money Purchase Pension Plan (the Cumberland Plan); the Childrens Clinic Money Purchase Pension Plan (the Clinic Plan); the Ruckels Farm Supply Defined Contribution Plan (the Ruckels Plan); and the First and Farmers Bank Employee Retirement Plan (the Bank Plan). All of the Plans are defined contribution plans except the Bank Plan, which is a defined benefit plan.

As of December 30, 1994, the Adams Plan had seven participants and total assets of $377,074; the Lake Plan had 271 participants and total assets of $939,926; the Cumberland Plan had twenty-one participants and total assets of $520,996; the Clinic Plan had fifteen participants and total assets of $593,925; the Ruckels Plan had ten participants and total assets of $147,207; and the Bank Plan had 124 participants and total assets of $662,513. Thus, as of December 30, 1994, the Plans had 448 participants and total assets of approximately $3,241,641.

2. The Bank represents that at various times during September, November and December of 1993, assets of the Plans were invested in the CMOs, which were purchased from broker-dealers that were independent of the Plans as well as the Bank and its affiliates. The CMOs are investment products through which investors purchase mortgage-backed securities that represent interests in a pool of residential mortgage loans. In general, investors receive payments of principal and interest or, in some cases, either principal or interest only, depending upon the type of security purchased. Interest payments change monthly in relation to a specific index, such as the London Interbank Offered Rate (LIBOR), contained in a formula used to calculate the interest rate for such securities. Principal payments vary in amount and timing depending upon how quickly the various mortgage-backed securities prepay due to the prepayment speed of the mortgages in the mortgage pools. The repayment of principal and interest is usually guaranteed by various U.S. Government Agencies, such as the Federal National Mortgage Association (FNMA or ''Fannie Mae'').

3. The CMOs are described as follows: (a) CUSIP 31358JAU5, FNMA Guaranteed REMIC Pass-Through Certificates, Fannie Mae REMIC Trust 1991–110, Class E; (b) CUSIP 31358NCV2, FNMA Guaranteed REMIC Pass-Through Certificates, Fannie Mae REMIC Trust 1992–96, Class E; (c) CUSIP 31359GDX1, FNMA Guaranteed REMIC Pass-Through Certificates, Fannie Mae REMIC Trust 1993–225, Class SM; (d) CUSIP 31359GDTO, FNMA Guaranteed REMIC Pass-Through Certificates, Fannie Mae REMIC Trust 1993–225, Class SO.[3]

[3] The applicant states further that if a plan acquires a ''guaranteed governmental mortgage pool certificate'', the plan's assets include the certificate but not any of the mortgages underlying such certificate (see 29 CFR 2510.3–101(i)). A ''guaranteed governmental mortgage pool certificate'' is a certificate (i) that is backed by, or evidences an interest in, specified mortgages or participation interests, and (ii) whose interest and principal payments are guaranteed by the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC or ''Freddie Mac''), or FNMA. Thus, the applicant represents that since all of the CMOs have interest and principal payments payable under the CMOs guaranteed by FNMA, the

All of the CMOs mentioned above are structured as a real estate mortgage investment conduits (''REMIC'') under section 860D of the Code. The various classes of certificates receive principal and, possibly, interest payments in differing portions and at differing times from the cash flows provided from the monthly payments received on the underlying mortgages.

The repayment of principal from the underlying mortgages fluctuates significantly. To facilitate the structuring of such REMICs, the prepayments on the pools of mortgages are commonly measured relative to a variety of prepayment models. The model used for these REMICs is the Public Securities Association's standard prepayment model or ''PSA''. This model assumes that mortgages will prepay at an annual rate of .2 percent in the first month after origination, then the prepayment rate increases at an annual rate of .2 percent per month up to the 30th month after origination and then the prepayment rate is constant at 6 percent per annum in the 30th and later months. This assumption is called 100 PSA.

The REMIC structure allocates principal payments to the various classes or ''tranches'' in varying amounts as principal payments are made accordingly to the allocations specified in the prospectuses. The exact date of repayment of all principal to any REMIC class is not known until the mortgage-backed securities are paid in full. The maturity for the various classes is referred to as the ''weighted average life'' (WAL). The WAL of a class refers to the average amount of time, expressed in years, which will elapse from the date of its issuance until each dollar of principal has been repaid to the investor based on the PSA assumption. The holders of all classes will receive all of their principal back. However, the timing of when that principal is returned is dependent on how quickly the underlying mortgages are repaid or refinanced. In no event will the time for the recovery of principal exceed the final maturity date of the underlying mortgages.

Each month the monthly payments on the underlying mortgages are collected and distributed to the holders of the various REMIC classes. Depending upon the structure of the REMIC, interest may be paid monthly according to a specific formula. The CMOs owned by the Plans, described in further detail below, are either ''principal only'' or ''inverse floaters'' indexed to one month LIBOR.

Principal only bonds are similar to Series E savings bonds in that the investor purchases the bond at a discount and receives the principal cash flow off the collateral. The difference in the principal amount invested and the face value equates to the investment's yield. The timing of the cash flows received determines the ultimate yield on the investment. With a principal only bond, the faster the collateral pays down, the higher the yield the investor receives. Income is recognized by accreting the discount over the expected life of the security; however, there are no regular interest payments received on principal only bonds. There is no loss of principal because the investor will ultimately receive face value. However, because there is no guarantee as to the timing of the cash flows, the bond's ultimate yield is unknown.

The remaining CMOs are ''inverse floaters'' so described, because the formulas used to calculate the interest payments, which adjust monthly for each certificate, usually raise the rate when the index falls and lower the rate when the index rises. ''LIBOR'' refers to the arithmetic mean of the London Interbank offered quotations for one-month Eurodollar deposits. LIBOR moves up or down as interest rates move up or down. The movement of LIBOR has an inverse relationship with the interest paid on all inverse floating rate classes.

The Bank, as trustee of the Plans, purchased all of the CMOs from Andrew F. Cashiola of Government Securities Corporation of Texas, located in Houston, Texas, and Randy Stevens of Hart Securities, Inc., located in Houston, Texas. The Bank states that neither the brokers (i.e. Mr. Cashiola or Mr. Stevens) nor their brokerage firms have any relationship to the Plans, the employers that maintain the Plans, the Bank or any of its affiliates.

A description of each CMOs, including the respective interest rate formulas, WAL and PSA assumptions are set forth below in the Appendix.

4. At the time of the purchase of the CMOs by the Bank, as trustee of the Plans, the Bank anticipated that each CMO would be retired within one to three years of the date of purchase due to prepayments of the underlying mortgages in each pool as obligors refinanced their mortgages at lower interest rates. Because of recent increases in interest rates, the market value of the CMOs had decreased significantly. On April 25, 1995, the Bank obtained bids to determine the fair market value of each CMO held by the Plans on the date of sale from three different independent broker-dealers—PNC Securities in Louisville, Kentucky; Commerce Union Investments in Memphis, Tennessee; and First Tennessee Corporation in Memphis, Tennessee (the Broker-Dealers). The Bank states that as of the date of the sale, the Broker-Dealers were not related to, or associated with, the Bank or the Plans. The Broker-Dealers provided the following bids as of April 25, 1995:[4]

CUSIP No.	PNC Securities	Commerce Union	First Tennessee	Average bid
31358JAU5	35.00	37.00	46.50	39.50
31358NCV2	42.00	37.00	39.50	39.50
31359GDT0	29.00	29.75	27.25	28.67
31359GDX1	14.00	20.00	24.50	19.50

Based on the pricing information obtained from the Broker-Dealers, the Bank represents that the fair market value of the CMOs was significantly below the original purchase price of the CMOs (as noted in the first table below in Representation #7). The expectation of additional interest rate increases in the near future caused the Bank to believe that the CMOs would not appreciate in the near term. As a result of these changing market conditions, the Bank anticipated that the CMOs will not be retired for fifteen to twenty years due to the slowing of the prepayment speed because of the recent increases in the

assets of the Plans do not include any of the mortgages underlying such CMOs.

[4] The Broker-Dealers' bids shown in the table represent a price quoted per $100 of principal. To determine the fair market value for each CMO based on the average bid quoted, the par value of the CMO would be multiplied by the particular quote, expressed as a percentage of 100. For example, if the par value of the CMO was $10,000 and the average bid for the CMO on April 25, 1995 was $39.50 per $100 of principal, the quoted price would have been $3950 since $10,000 × .3950 = $3950.

interest rates.[5]

5. Under the terms of the Plans and the applicable law, a Plan participant who retires or terminates employment is eligible to receive a distribution of the value of his or her account in the Plan, sometime immediately following retirement or termination. For purposes of this distribution, the value of the participant's account is the value of the account as of the Plan's last valuation date. If the Plans continued to hold the CMOs, the value of each participant's account, as of the valuation date, would reflect the recent decreases in fair market value of the CMOs. In order to mitigate such potential losses, the Bank purchased the CMOs on April 25, 1995 from the Plans at an amount, which in each case was equal to the greater of: (a) The outstanding principal balance for each CMO owned by the Plans, plus accrued but unpaid interest, at the time of the sale, (b) the amortized cost for each CMO owned by the Plans, plus accrued but unpaid interest, as determined by the Bank on the date of sale; or (c) the fair market value of each CMO owned by the Plans on the basis of reasonable inquiry from at least three sources that are broker-dealers or pricing services independent of the Bank.

6. The Bank calculated the value of the CMOs held by the Plans, as of April 25, 1995, using an amortized cost computation. The Bank states that the computation of the amortized cost was arrived at by a series of computations. First, the Bank determined the amount of the discount paid upon purchase (Purchase price—100 = Discount). The par value or face value of each CMO was 100. The Bank states that any discount must be allocated monthly in order to be properly matched to the principal payments to be received over the life of the investment. Also, any discount must be allocated monthly in order to properly account for the income to be earned over the life of the investment. The number of months to which the Bank allocated each discount was determined by the WAL for each CMO at the time of purchase (expressed in years) multiplied by twelve (WAL × 12 = amortizing months).[6] Then, the Bank determined the amount of each discount to be allocated to each month by dividing each discount by the number of amortizing months. The Bank determined the number of months remaining in the life of each CMO by subtracting from the number of amortizing months the number of months that the Plan actually held each CMO. The Bank states that the remaining months were then multiplied by each monthly discount amount to arrive at the discount balance for each CMO. The discount balance was added to the par value for each CMO (i.e., 100) to arrive at the amortized cost remaining for each CMO. Thus, the Bank states that the formula it used for calculating amortized cost was as follows:[7]

7. The Bank also calculated the remaining principal balance, plus accrued but unpaid interest, on the CMO investments held by each Plan as of April 25, 1995, based on the original cost of the securities and the principal and interest payments received by the Plans through that date. As shown on the table below, the Bank represents that, as of April 25, 1995, all of the Plans would have received more than the remaining principal balances (plus accrued but unpaid interest) on their CMO investments by using the Bank's amortized cost computation for the CMOs. In addition, the table below shows the fair market values of the CMOs held by each Plan, based on the Bank's solicitation of bids from the Broker-Dealers.

Plan	Amort. cost	Prin. bal.	Mkt. value
Adams Plan	$62,321	$53,845	$19,650
Lake Plan	259,723	225,534	80,643
Cumberland Plan	132,126	111,662	34,889
Clinic Plan	139,288	116,543	30,108
Ruckels Plan	14,466	11,698	2,925
Bank Plan	243,234	210,076	72,895

The Bank also determined that, as of April 25, 1995, a sales price for the CMOs held by each Plan based on amortized cost, plus the total principal and interest payments received by the Plans through the date of sale, produced a total return to the Plans that exceeded the Plans' total original cost for the CMOs.

[5] The Department is expressing no opinion in this proposed exemption regarding whether the acquisition and holding of the CMOs by the Plans violated any of the fiduciary responsibility provisions of Part 4 of Title I of the Act.

The Department notes that section 404(a) of the Act requires, among other things, that a fiduciary of a plan act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of a plan. Section 404(a) of the Act also states that a plan fiduciary should diversify the investments of a plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

In this regard, the Department is not providing any opinion as to whether a particular category of investments or investment strategy would be considered prudent or in the best interests of a plan as required by section 404 of the Act. The determination of the prudence of a particular investment or investment course of action must be made by a plan fiduciary after appropriate consideration to those facts and circumstances that, given the scope of such fiduciary's investment duties, the fiduciary knows or should know are relevant to the particular investment or investment course of action involved, including the plan's potential exposure to losses and the role the investment or investment course of action plays in that portion of the plan's investment portfolio with respect to which the fiduciary has investment duties (see 29 CFR 2550.404a-1). The Department also notes that in order to act prudently in making such investment decisions, a plan fiduciary must consider, among other factors, the availability, risks and potential return of alternative investments for the plan. Thus, a particular investment by a plan, which is selected in preference to other alternative investments, would generally not be prudent if such investment involves a greater risk to the security of a plan's assets than comparable investments offering a similar return or result.

[6] As noted previously in Representation #3, the WAL for a CMO is determined at the time of purchase based on various assumptions about the speed of principal repayments and interest rate changes, using financial data provided by independent sources (such as Bloomberg Financial Markets). The Bank states that changes to the formula for calculating the amortized cost based on WAL assumptions other than at the time of purchase would not provide an administratively acceptable method of allocating the discount for a CMO because such a method would require constant adjustments which are not material to the concept of income recognition as it relates to CMOs.

[7] For example, assume that a particular CMO investment has been held by a Plan for 6 months. If the WAL was 2.02 years and the cost was 90 based on the par value being 100, the formula would be:

$$[[(90–100)/(2.02 \times 12)] \times [(2.02 \times 12) - 6)]] + 100$$
$$= [(-10/24.24) \times (24.24 - 6)] + 100$$
$$= (-.4125413 \times 18.24) + 100$$
$$= -7.5247533 + 100$$
$$= 92.475247$$

As the formula indicates, the amortized cost using the average life at purchase would be $92.475247 as compared to the actual cost of $90.00. Therefore, the Bank states that the amortized cost formula will cause the Plan to be paid an amount for this CMO investment which is slightly more than the Plan's original cost (i.e. basis).

Plan	Interest received	Principal received	Amort. cost	Total receipts	Original cost
Adams Plan	$4,080	.....	$62,321	$66,401	$57,925
Lake Plan	18,117	15,689	259,723	293,529	259,273
Cumberland Plan	10,199	18,826	132,126	161,151	140,688
Clinic Plan	12,376	.....	139,288	151,664	128,884
Ruckels Plan	1,531	.....	14,466	15,997	13,228
Bank Plan	17,513	20,395	243,234	281,142	247,927

The Bank represents that each Plan received a reasonable rate of return on the CMOs during the period of time that it held the CMOs. In this regard, the Bank states that the annualized weighted average rate of return received by each Plan on its CMOs, net of the principal investment, was as follows: (i) 14.28% for the Adams Plan; (ii) 13.57% for the Lake Plan; (iii) 16.62% for the Cumberland Plan; (iv) 17.91% for the Clinic Plan; (v) 21.53% for the Ruckels Plan; and (vi) 14.16% for the Bank Plan.[8]

Based on the Bank's determination that the amortized cost method resulted in the greatest sales price as of April 25, 1995, the Bank purchased the CMOs from the Plans on April 25, 1995 at each CMOs' amortized cost for a total of $851,158.

8. The Bank, as trustee of the Plans, states that the sale of the CMOs was in the best interests of the Plans and their participants and beneficiaries. The Bank states that the sale allowed the Plan participants to insulate themselves from further decreases in the fair market value of the CMOs and to mitigate any losses. In addition, the Bank states that the sale of the CMOs shifted the consequences associated with selling the CMOs before their retirement from the Plan participants to the Bank.

9. The Bank represents that it took all appropriate actions necessary to safeguard the interests of the Plans and their participants and beneficiaries in connection with the sale of the CMOs. The Bank ensures that each Plan received the appropriate amount of cash from the Bank in exchange for such Plan's CMOs on April 25, 1995. The Bank also ensures that the Plans did not pay any commissions or other expenses in connection with the sale of the CMOs to the Bank.

10. In summary, the Bank represents that the sale satisfied the statutory criteria of section 408(a) of the Act and section 4975 of the Code because: (a) Each sale was a one-time transaction for cash; (b) Each Plan received an amount that was equal to the greater of: (i) The outstanding principal balance for each CMO owned by the Plan, plus accrued but unpaid interest, at the time of the sale; (ii) the amortized cost for each CMO owned by the Plans, plus accrued but unpaid interest, as determined by the Bank on the date of sale; or (iii) the fair market value of each CMO owned by the Plan as determined by the Bank on the basis of reasonable inquiry from at least three sources that are broker-dealers or pricing services independent of the Bank; (c) The Plans did not pay any commissions or other expenses with respect to the sale; (d) The Bank, as trustee of the Plans, determined that the sale of the CMOs would be in the best interests of each Plan and its participants and beneficiaries; (e) The Bank took all appropriate actions necessary to safeguard the interests of the Plans and their participants and beneficiaries in connection with the proposed transactions; and (f) Each Plan received a reasonable rate of return on the CMOs during the period of time it held the CMOs.

Notice to Interested Persons

The applicant states that notice of the proposed exemption shall be made by first class mail to the appropriate Plan fiduciaries within fifteen days following the publication of the proposed exemption in the **Federal Register**. This notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and a supplemental statement (see 29 CFR 2570.43(b)(2)) which informs interested persons of their right to comment on and/or request a hearing with respect to the proposed exemption. Comments and requests for a public hearing are due within forty-five days following the publication of the proposed exemption in the **Federal Register**.

Appendix

A. The FNMA Guaranteed REMIC Pass-Through Certificates, Fannie Mae REMIC Trust 1991–110, Class E were issued by Fannie Mae as part of an issue of pass-through certificates with nine various classes in the total amount of $200,010,000. The Bank, as trustee of the Plans, purchased portions of one of those classes. The Certificates are secured by first lien residential mortgages with an original term to maturity of 360 months or less.

This REMIC uses a 300 PSA assumption regarding principal repayment (3 times 100 PSA). The WAL for the E class based on a 300 PSA was 10.9 years at the time of purchase.

This REMIC is a principal only bond and, therefore, does not bear interest. The initial interest rate and final distribution date for class E was 9.1 percent and May of 2021, respectively.

B. The FNMA Guaranteed REMIC Pass-Through Certificates, Fannie Mae REMIC Trust 1992–96, Class B were issued by Fannie Mae as part of an issue of pass-through certificates with six various classes in the total amount of $300 million. The Bank, as trustee of the Plans, purchased portions of one of those classes. The Certificates are secured by first lien residential mortgages with an original term to maturity of 360 months or less.

This REMIC uses a 375 PSA assumption regarding principal repayment (3.75 times 100 PSA). The WAL for the B class based on a 375 PSA was 5.9 years at the time of purchase.

This REMIC is a principal only bond and, therefore, does not bear interest. The initial interest rate and final distribution date for class B was 8.3 percent and May of 2022, respectively.

C. The FNMA Guaranteed REMIC Pass-Through Certificates, Fannie Mae REMIC Trust 1993–225, Classes SM and SO were issued by Fannie Mae as part of an issue of pass-through certificates with 130 various classes in the total amount of $3,102,000,000. The Bank, as trustee of the Plans, purchased a portion of one class. The Certificates are secured by first lien residential mortgages with an original term to maturity of 360 months or less.

[8] The formula for the annualized rate of return for the months held was computed for each CMO as follows: [[((Interest Collected + Accretion Income) / Number of Months Held) × 12] / Total Cost]. The term ''Accretion Income'' represents the accretion of the discount received off of the face value of each CMO allocated to the number of months each CMO was held. To arrive at an annualized weighted average rate of return for each Plan, the annualized rate of return for each CMO was calculated to reflect the return of each CMO held by each Plan. The individual CMOs held by each Plan were ''weighted'' according to the amount invested to compute the total weighted average rate of return for each Plan.

This REMIC uses a 200 PSA assumption regarding principal repayment (2 times 100 PSA). The WAL for class SM and SO based on a 200 PSA was 20.2 years and 9.4 years, respectively, at the time of purchase.

The formula for the interest on class SM is 27.7289% − (LIBOR×4.26589) with a minimum rate of 0.0% and a maximum rate of 27.7289%.[9] For class SO, the interest is 23.1358% − (LIBOR×3.30495) with a minimum rate of 0.0% and a maximum rate of 23.135. As an inverse floater, the movement of LIBOR has an inverse relationship on the interest paid on all inverse floating rate classes. The initial interest rates for the SM and SO classes were 14.92206% and 12.60047, respectively. The final distribution dates for the SM and SO classes were December 2023 and November 2022, respectively. The interest rate for the SM class can drop to 0.0% if LIBOR reaches 6.5% or higher. The interest rate for the SO class can drop to 0.0% if LIBOR reaches 7.0% or higher.

FOR FURTHER INFORMATION CONTACT: Mr. E. F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

PaineWebber Incorporated Located in New York, New York

[Application No. D–09953]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, PaineWebber Incorporated and each of its affiliates (collectively, PaineWebber), shall not be precluded from functioning as a ''qualified professional asset manager'' pursuant to Prohibited Transaction Class Exemption 84–14 (PTCE 84–14, 49 FR 9494, March 13, 1984) solely because of a failure to satisfy section I(g) of PTCE 84–14, as a result of General Electric Company's ownership interest in PaineWebber, including any current or future affiliate of PaineWebber which is, or in the future may become, eligible to serve as a QPAM under PTCE 84–14; provided the following conditions are satisfied:

(A) This exemption is not applicable to any affiliation by PaineWebber with any person or entity convicted of any of the felonies described in part I(g) of PTCE 84–14, other than G.E; and

(B) This exemption is not applicable with respect to any convictions of G.E. for felonies described in part I(g) of PTCE 84–14 other than those involved in the G.E. Felonies, described below.

Summary of Facts and Representations

Introduction: General Electric Company (G.E.), an approximately 22 percent owner of PaineWebber Group Inc. (P.G.I.), has been convicted during the past ten years of certain felonies relating to G.E.'s government contracts operations prior to its acquisition of interests in P.G.I. Because G.E. acquired ownership interests in P.G.I. during 1994, the felony convictions could bar P.G.I. and its wholly-owned subsidiaries from acting as ''qualified professional asset managers'' (QPAMs) under Prohibited Transaction Class Exemption 84–14 (PTCE 84–14, 49 FR 9494, March 13, 1984). Part I(g) of PTCE 84–14 requires that no person owning, directly or indirectly, 5 percent or more of the QPAM has been convicted of certain felonies within ten years preceding the transaction for which the QPAM intends to utilize PTCE 84–14. PaineWebber Incorporated (PaineWebber), a wholly-owned subsidiary of P.G.I, and two of PaineWebber's wholly-owned subsidiaries (collectively, the Applicants) are requesting an exemption to enable them to qualify as QPAMs without regard to any failure to satisfy part I(g) of PTCE 84–14 by reason of G.E.'s ownership of P.G.I., under the terms and conditions described herein.

1. PaineWebber, a Delaware corporation which is wholly owned by P.G.I., engages in a variety of securities services, with its principal place of business in New York, New York. PaineWebber is registered as a broker-dealer and an investment adviser, maintaining memberships on all principal securities and commodities exchanges in the United States as well as the National Association of Securities Dealers, Inc. PaineWebber represents that it provides investment advisory services relating to a wide variety of securities, including but not limited to the following: Exchange-listed, over-the-counter and foreign securities; rights and warrants; securities options and futures; corporate and governmental debt securities; commodities futures, contracts and options; bankers' acceptances; and mutual fund shares. PaineWebber is joined in requesting the exemption by two of its wholly-owned subsidiaries: (a) Mitchell Hutchins Asset Management Inc. (MHAM), located in New York, is an investment management services provider which has sponsored and offers interests in a number of limited partnerships and offshore funds; and (b) Mitchell Hutchins Institutional Investors Inc. (MHII), located in New York, provides discretionary investment management services and non-discretionary investment advisory services. MHII provides investment advice relating to privately-placed alternative asset investment vehicles, including funds specializing in venture capital, distressed debt, leveraged buyouts and restructurings, and privately-placed securities.

The Applicants represent that the clientele served by the operations of PaineWebber and its subsidiaries, especially MHAM and MHII, include substantial numbers of large employee benefit plans subject to the Act. The applicants maintain that, given the size and number of the plans which the Applicants represent, the large number of financial service providers engaged by such plans, the breadth of the definition of ''party in interest'' under the Act, and the wide array of services offered by the Applicants, it would not be uncommon for an Applicant to propose a transaction involving a party in interest with respect to a plan for which the Applicant is acting in a fiduciary capacity. The Applicants represent that the proposing of such transactions is occasionally necessary to offer plan clients adequate investment diversification opportunities, and that such opportunities will be missed if the Applicants are not permitted to function as QPAMs pursuant to PTCE 84–14.

2. PaineWebber represents that prior to October 17, 1994, G.E. did not have any ownership interests in any of the Applicants. On October 17, 1994, an agreement was executed (the Agreement) between P.G.I., G.E. and G.E.'s wholly-owned subsidiary Kidder Peabody Group Inc. (Kidder). Pursuant to the Agreement, P.G.I. acquired certain assets of Kidder, and G.E. acquired 21,500,00 shares of P.G.I. common stock, which is the sole outstanding class of P.G.I. securities entitled to vote in the election of P.G.I. directors. The Agreement also resulted in G.E.'s receipt of 2,500,000 shares of redeemable preferred P.G.I. stock, which does not confer the right to vote for directors or any right to convert to shares of common stock, and 1,000,000 shares of convertible preferred P.G.I. stock, which does not confer any right to vote for directors. G.E. has the right, subject to approval of the shareholders of P.G.I., to convert its shares of convertible preferred stock into P.G.I. common stock, and G.E. submitted a proposal at

[9] ''LIBOR'' refers to the arithmetic mean of the London interbank offered quotations for one-month Eurodollar deposits. LIBOR moves up or down as interest rates move up or down. The movement of LIBOR has an inverse relationship on the interest paid on all inverse floating rate classes.

the May 1995 annual P.G.I. shareholders meeting to enable the conversion of G.E.'s convertible preferred stock into common stock. The Applicants represent that it is estimated that G.E. would acquire an additional 5,521,811 shares of P.G.I. common stock through the conversion of the convertible preferred stock, resulting in G.E.'s ownership in the aggregate of approximately 27,021,811 shares, or approximately 26.4 percent of the outstanding shares, of P.G.I. common stock.

3. On three occasions from 1986 through 1992, G.E. pled guilty or was convicted of felonies relating to the government contract activities of G.E. and its subsidiaries (the G.E. Felonies). The Applicants represent that the G.E. Felonies did not in any way relate to any employee benefit plan or any person's authority with respect to an employee benefit plan. The Applicants describe the G.E. Felonies more specifically as follows:

(a) On May 13, 1986, G.E. pled guilty to four counts of filing false claims with the United States Air Force and 104 counts of filing false statements with the United States Air Force in connection with work performed in 1980 by G.E.'s Re- Entry Systems Operation. The Applicants represent that these counts primarily related to individual time cards that were improperly charged to certain government contracts.

(b) On February 2, 1990, G.E. was convicted of mail fraud and violations of the False Claims Act relating to the conduct in 1983 of two contract employees of a G.E. subsidiary, Management and Technical Services Co., involving failure to notify the United States Army that subcontractors had agreed to prices lower than those contained in projections for the project. The Applicants represent that neither G.E. nor any officer or employee of G.E. was accused of having knowledge of the discrepancy and withholding it from the United States Army.

(c) On July 22, 1992 G.E. pled guilty to violations of 18 U.S.C. 287 (submitting false claims against the United States), 18 U.S.C. 1957 (engaging in monetary transactions in criminally derived property), 15 U.S.C. 78m(b)(2)(A) and 78ff(a) (inaccurate books and records), and 18 U.S.C. 371 (conspiracy to defraud and commit offenses against the United States). The Applicants represent that these violations related to a series of events between 1984 and 1990, involving false statements made by employees of G.E. Aircraft Engines Division to a foreign government that led such foreign government to submit false claims to the United States relating to the purchase of weapons.

4. The Applicants represent that the G.E. Felonies did not relate in any way to the conduct or business of PaineWebber, any PaineWebber securities broker or dealer, investment adviser, bank, insurance company or fiduciary. The Applicants maintain, however, that although none of the unlawful conduct involved the Applicants' investment management activities or any plans covered by the Act, the criminal activities described above could preclude each component of PaineWebber, as an affiliate of G.E., from serving as a ''qualified professional asset manager'' (QPAM), due to the provisions of sections I(g) and V(d) of PTCE 84–14. Section I(g) of PTCE 84–14 precludes a person who otherwise qualifies as a QPAM from serving as a QPAM if such person or an affiliate thereof has within the 10 years immediately preceding the transaction been either convicted or released from imprisonment as a result of certain criminal activity, including any crime described in section 411 of the Act. Because the G.E. Felonies involved crimes described in section 411 of the Act and monies transferred to or claimed by G.E., the Applicants represent that they may be barred from qualifying as QPAMs.

5. Accordingly, the Applicants request an exemption to enable PaineWebber and its components and subsidiaries to function as QPAMs despite their failure to satisfy section I(g) of PTCE 84–14 solely because of the G.E. Felonies and the Applicants' affiliation with G.E. The Applicants request that the exemption also apply to wholly-owned PaineWebber subsidiaries that are created or acquired in the future. The transactions covered by the proposed exemption would include the full range of transactions that can be executed by investment managers who qualify as QPAMs pursuant to PTCE 84–14. If granted, the exemption will enable PaineWebber and its direct and indirect wholly-owned subsidiaries to qualify as QPAMs by satisfying all conditions of PTCE 84–14, except that G.E.'s convictions and guilty pleas in connection with the G.E. Felonies shall not prevent satisfaction of the condition stated in section I(g) of PTCE 84–14 because of affiliation with G.E. The exemption, if granted, will relate only to the Applicants' affiliation with G.E. and not to their affiliation with any other persons or entities.[10]

6. The Applicants maintain that because of restrictions on G.E.'s ability to influence the management or policies of the Applicants, there is no cause for concern that the affiliation with G.E. will in any way affect the suitability of any of the Applicants to act as a QPAM. The Applicants represent that the Agreement contains the following restrictions and prohibitions which effectively preclude G.E. from controlling the Applicants: (a) At the annual meeting of P.G.I.'s shareholders, G.E. is required to present its shares to establish a quorum and may only vote its shares either as directed by P.G.I.'s board of directors or in proportion as all other shares are voted on a matter; (b) G.E. has only one representative on P.G.I.'s board of directors, comprised of 15 persons, and no representative on P.G.I.'s executive committee; (c) G.E. is given no right, power or privilege to be consulted on decisions of P.G.I. or to be involved in the day-to-day management of P.G.I.; (d) G.E. has not been given any veto power over any corporate action by P.G.I.; and (e) G.E. is prohibited from soliciting proxies or otherwise obtaining proxies in opposition to the P.G.I. board of directors. The Applicants emphasize that G.E.'s acquisition of an ownership interesting P.G.I. did not result in any integration of the separate businesses of G.E. and the Applicants. To the contrary, the Applicants represent that G.E. merely became a shareholder of P.G.I., and the Applicants' businesses remain entirely separate from G.E.'s business.

Furthermore, the Applicants state that they are committed to a strong legal compliance program, involving their own policies and procedures to promote compliance with applicable laws including the Act. In this regard, the Applicants represent that their internal compliance procedures currently are undergoing revision and updating, including an expansion of the materials relating to fiduciary responsibilities and prohibited transactions under the Act, in order to prevent illegal activity in the conduct of their business. The Applicants state that such expanded discussion of the Act will be reflected in newly-promulgated revisions to P.G.I.'s sales practice policy manual and the branch office managers' supervisory manual, each of which will feature updated legal developments and illustrative examples to make sales staff

[10] For example, any affiliation of the Applicants with any company or individual convicted of any of the felonies described in section 411 of the Act, other than G.E. with respect to the G.E. Felonies described herein, is not within the scope of the exemption proposed herein. Furthermore, any future convictions of or guilty pleas by G.E. for felonies described in part I(g) of PTCE 84–14 are not within the scope of the exemption proposed herein.

aware of the restrictions involved in dealing with employee benefit plans.

7. In summary, the Applicants represent that the criteria of section 408(a) of the Act are satisfied for the following reasons: (a) The G.E. Felonies occurred prior to any affiliation between G.E. and the Applicants, and did not involve any conduct on the part of the Applicants; (b) G.E. does not have control or influence over the operations of the Applicants; (c) The Applicants are undertaking reform and revision of their policies and procedures to prevent illegal activity; and (d) The exemption will permit the Applicants to engage in a broader variety of investments and services on behalf of client employee benefit plans which demand diverse investment opportunities.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

LEGENT Retirement Security Plan (the Plan) Located in Pittsburgh, PA

[Application No. D–10015]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale by the Plan of a limited partnership interest in BPT Union City Associates, Inc. (the BPT Interest) to LEGENT Corporation (LEGENT), a party in interest with respect to the Plan.

This proposed exemption is conditioned upon the following requirements: (1) All terms and conditions of the sale are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party; (2) the sale is a one-time transaction for cash; (3) the Plan is not required to pay any commissions, costs or other expenses in connection with the sale; and (4) the Plan receives a sales price which is not less than the greater of: (a) The fair market value of the BPT Interest as determined by a qualified, independent appraiser, or (b) the total acquisition cost plus opportunity costs attributable to the BPT Interest.

Summary of Facts and Representations

1. The Plan is a defined contribution plan sponsored by LEGENT, a publicly-held Pennsylvania corporation engaged in supplying systems management solutions to large users of computer technology. As of September 30, 1993, the Plan had net assets available for benefits that totaled $49,202,389 and 1,890 participants.

Prior to September 1, 1993, Mellon Bank (Mellon Bank) served as the Plan trustee. Effective September 1, 1993, Fidelity Investments became the trustee of all of the Plan's assets with the exception of certain limited partnership interests (the Interests). Although Mellon Bank continues to serve as Plan trustee with respect these Interests, which the Plan holds as general assets, effective 1989, the Plan has permitted each participant to direct the investments held in his or her individual account among several funds selected by LEGENT.

2. On July 1, 1977, Morino Inc. (Morino), a Delaware corporation engaged in supplying systems management solutions to users of computer technology, adopted the Morino Associates, Inc. Money Purchase Pension Plan (Morino Pension Plan) and the Morino Associates, Inc. Profit Sharing Plan (Morino Profit Sharing Plan; collectively, the Morino Plans). On October 1, 1989, Morino merged with Duquesne Systems, Inc. (Duquesne) and formed LEGENT. Effective October 1, 1989, the Morino Pension Plan merged into the Duquesne Systems, Inc. Pension Plan and the Morino Profit Sharing Plan merged into the Duquesne Systems, Inc. Profit Sharing Plan. The resulting merged plans were amended and restated effective October 1, 1989 as the LEGENT Corporation Pension Plan and the LEGENT Corporation Savings Plan, respectively. Subsequently on October 1, 1992, the LEGENT Corporation Savings Plan was amended and restated as the Plan to reflect the merging of the LEGENT Corporation Pension Plan and the Goal Systems International, Inc. Profit Sharing Plan into the LEGENT Corporation Savings Plan due to the merger of Goal Systems International, Inc. into LEGENT.

3. Among the assets of the Plan is a 6 percent limited partnership interest in BPT, a Tennessee limited partnership that was organized to acquire, own, operate and sell a strip shopping center located in Union City, Tennessee. BPT is an unrelated party. In a private offering memorandum dated June 5, 1985, BPT made an aggregate offering to investors of $1,548,680. In accordance with the terms of the memorandum, BPT offered to sell 35 limited partnership units for a per unit purchase price of $25,677 and 35 participation notes for an issuance price per note of $18,571. The participation notes consist of second deeds of trust on real property and they mature on July 31, 1995.

The Morino Pension Plan and the Morino Profit Sharing Plan acquired two and three participation notes, respectively, from unrelated parties on August 30, 1985 for a total purchase price of $92,855. The acquisition of the BPT Interest was made at the direction of Morino. Although the Plan received income totaling $20,341 from BPT for the years 1990 and 1991, no further income payments were made to the Plan after 1991.

To the extent known, none of the obligors of the notes are parties in interest with respect to the Plan. In addition, the general partners of BPT and the investors in such limited partnership are not related to the Plan or its predecessors. Further, it is represented that LEGENT has never invested in BPT.

4. When Morino was merged with Duquesne, the existing Plan accounts invested in the BPT Interest were not intially frozen. Because the former Morino Plans did not offer individual participant investment elections, the Plan has held the BPT Interest as a general asset with a portion of such Interest being allocated to all participants in the Morino Plans. As these participants terminated their employment with Duquesne, their allocable portion of the BPT Interest was purchased by the Plan using the cash generated from such Interest. The remaining portions of the participant accounts that were invested in the BPT Interest were frozen when Mellon Bank determined that the BPT Interest had no value and there was insufficient cash to purchase any additional portions from terminating employees. Accordingly, LEGENT froze the remaining accounts invested in the BPT Interest. As of January 13, 1995, the BPT Interest was allocated to the accounts of eighty-six former Morino employees.

5. LEGENT represents that the BPT Interest is a highly illiquid investment for which there is a very limited secondary market.[11] Mellon Bank represents, in a letter dated November 29, 1993, that it has made every effort to sell the BPT Interest to unrelated parties. However, due to the insufficient secondary market, no purchaser has

[11] The Department expresses no opinion, in this proposed exemption, on whether Plan fiduciaries violated any of the fiduciary responsibility provisions of Part 4 of Title I of the Act in acquiring and holding the BPT Interest.

been found. Accordingly, LEGENT requests an administrative exemption from the Department in order to purchase the BPT Interest from the Plan.

6. Mellon Bank proposes to sell the BPT Interest to LEGENT for not less than the greater of: (a) The fair market value of the BPT Interest as determined by a qualified, independent appraiser, or (b) the total acquisition cost and opportunity costs attributable to the BPT Interest. The proposed sale will be a one-time transaction for cash. In addition, the Plan will not be required to pay any fees, commissions or expenses in connection with the sale. Mellon Bank represents that it will determine, prior to the sale, whether such transaction is appropriate for the Plan and is in the best interests of the Plan and its participants and beneficiaries.

7. In an appraisal report dated October 20, 1994, G. Dan Poag, President of Bright, Poag & Thompson, Inc., the general partner of BPT, states that the BPT Interest has no fair market value. Mr. Poag explains that the investor notes are subordinate to the first mortgage and have not been serviced in some time. In an addendum to his appraisal report of April 17, 1995, Mr. Poag again confirms that the BPT Interest has a current fair market value of zero as of that date.

8. Because the fair market value of the BPT Interest is less than its acquisition cost, LEGENT will purchase the BPT Interest from the Plan for the latter amount. In addition, LEGENT represents that because the Plan did not receive an adequate rate of return on the BPT Interest, it will pay $18,922 to make up for the Plan's lost opportunity costs.[12]

Accordingly, LEGENT will purchase the BPT Interest from the Plan for an aggregate purchase price of $111,777.[13]

9. In summary, it is represented that the transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) All terms and conditions of the sale will be at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party; (b) the sale will be a one-time transaction for cash; (c) the Plan will not be required to pay any commissions, costs or other expenses in connection with the sale; (d) the Plan will receive a sales price not less than the greater of: (1) The fair market value of the BPT Interest as determined by a qualified, independent appraiser, or (2) the total acquisition cost plus opportunity costs that are attributable to the BPT Interest; and (e) Mellon Bank will determine that the sale is appropriate transaction for the Plan and in the best interests of the Plan and its participants and beneficiaries.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value, such excess may be considered to be a contribution by the sponsoring employer to the plan and therefore must be examined under applicable provisions of the Code, including sections 401(a)(4), 404 and 415.

Notice to Interested Persons

Notice of the proposed exemption will be given to all interested persons by first-class mail within 30 days of the date of publication of the notice of pendency in the **Federal Register**. Such notice will include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment on and/or to request a hearing. Comments with respect to the notice of proposed exemption are due within 60 days after the date of publication of this proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

KeyCorp 401(k) Savings Plan (the Plan) Located in Cleveland, Ohio

[Application No. D–10023]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) and 406(b)(1) and 406(b)(2) of the Act, and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed loan of funds (the Loan) to the Plan by KeyCorp (the Employer), the sponsor of the Plan, with respect to Guaranteed Investment Contract No. 62149 (the GIC) issued by Confederation Life Insurance Company of Canada (Confederation), and the potential repayment by the Plan of the Loan upon receipt of payments under the GIC; provided the following conditions are satisfied: (a) No interest and/or other expenses are paid by the Plan in connection with the Loan; (b) All of the terms and conditions of the proposed Loan are no less favorable to the Plan than those which the Plan could obtain in an arm's-length transaction with an unrelated party; (c) The Loan will be no less than the amount described in this Notice of Proposed Exemption; (d) The repayment of the Loan will not exceed the total amount of the Loan; (e) The repayment of the Loan by the Plan will be restricted to funds paid to the Plan under the GIC by Confederation or other responsible third parties with respect to the GIC; and (f) The repayment of the Loan will be waived to the extent the amount of the Loan exceeds the proceeds the Plan receives from the GIC.

Summary of Facts and Representatives

1. The Employer is a financial service holding company headquartered in Cleveland, Ohio, and registered under the Federal Bank Holding Company Act of 1956. The Key Trust Company of Ohio (Key Bank) is a wholly owned subsidiary of the Employer. Society Corporation merged with and into KeyCorp effective March 1, 1994, with Society Corporation becoming the legal successor-in-interest. Also on March 1, 1994, Society Corporation changed its name to KeyCorp. The Society National Bank, formerly a subsidiary of Society Corporation, is now Key Bank.

2. The Plan is a defined contribution profit sharing plan with a cash or deferred arrangement as provided in section 401(k) of the Code, and an employee stock ownership plan as provided in section 4975(e)(7) of the Code. Participants are permitted to direct the investment of their individual accounts among five investment funds, the Equity Fund, the Money Market Fund, the Balanced Fund, the Bond Fund, and the Corporation Stock Fund. Key Bank is the trustee for four of the five investment funds, and Wachovia Bank of North Carolina is the Trustee of the Plan's Corporation Stock Fund. Approximately 21,000 employees of the

[12] LEGENT represents that the average rates of return for the remaining assets that were held each year by its predecessor Plans is a fair measure of the Plan's lost opportunity costs. Therefore, LEGENT has calculated interest on the amount invested in the BPT Interest for the Plan Years beginning after September 30, 1991 since BPT paid dividends to the Plan through 1991. Using this method of calculation, LEGENT represents that the BPT Interest would have earned aggregate opportunity costs of $18,922.

[13] The applicant represents that the amount by which the purchase price for the BPT Interest exceeds its fair market value, if treated as an employer contribution to the Plan, when added to the balance of the annual additions to such Plan, will not exceed the limitation prescribed by section 415 of the Code.

Employer and its affiliates participate in the Plan. The Plan had assets of $80.8 million as of April 24, 1995.

3. On April 19, 1990, Society National Bank (now, Key Bank) as trustee for the Society Corporation Employee Stock Purchase and Savings Plan (now, the Plan) entered into an agreement with Confederation's Atlanta, Georgia office to purchase the GIC. Under the terms of the GIC, the Plan deposited $1 million at a guaranteed interest rate of 9.4% for 5 years. Pursuant to the terms of the GIC, interest of $94,000 was to be paid on April 16 of each year until the expiration date of the GIC on April 16, 1995. On April 16, 1995 a final payment of $1,094,000 was due to the Plan. In accordance with the terms of the GIC, all interest due was paid to the Plan through April 1994.

On August 11, 1994, the Canadian operations of Confederation were placed in conservatorship and rehabilitation by Canadian regulators. The next day, August 12, 1994, the Michigan Insurance Commission similarly placed Confederation's United States operations into conservatorship and rehabilitation.[14] Consequently, on April 16, 1995, the final payment of $1,094,000 due the Plan under the GIC was not paid. In addition, the applicant represents that it is uncertain as to what portion of the defaulted interest and principal will be paid to the Plan and what timeframe and payment terms will be forthcoming as part of the rehabilitation proceedings.

4. In order to prevent any loss to the Plan, the Employer wishes to make the Loan under the terms described herein. The amount of the Loan will be the final payment due the Plan under the GIC ($1,094,000) plus interest on such amount from April 16, 1995, at the rate of interest earned by the Plan's Bond Fund to the date of the Loan.

The applicant represents that the Bond Fund is primarily invested in the Victory Limited Term Income Fund which is an open-end mutual fund (the Mutual Fund). The Mutual Fund prospectus states that the Mutual Fund invests in high grade fixed income securities with an average maturity of between two and five years. In addition, the Bond Fund holds a second GIC which is not the subject of this proposed exemption. For the three month period ended March 31, 1995, the Bond Fund had a return of 2.87%.

5. No interest or other expenses will be paid by the Plan pursuant to the transaction. Repayment of the Loan is limited to the amounts received by the Plan from Confederation or any other responsible third parties making payment on behalf of Confederation. The Employer will have no recourse against the Plan or any participants or beneficiaries for additional funds to repay the Loan. To the extent the amounts received from Confederation and responsible third parties are insufficient to repay the Loan, repayment will be waived. In no event will the repayment exceed the amount of the Loan.

6. In summary, the applicant represents that the proposed transaction will satisfy the criteria of section 408(a) of the Act because: (a) The Plan will receive the full amount due under the GIC plus interest from the GIC's maturity date to the date of the Loan; (b) no interest or other expenses will be paid by the Plan; (c) the repayment of the Loan is restricted to amounts received from Confederation and other responsible third parties with respect to the GIC; (d) the repayment will not exceed the amount of the Loan; and (e) repayment will be waived to the extent that the proceeds received with respect to the GIC are less than the amount of the Loan.

NOTICE TO INTERESTED PERSONS: Notice to interested persons will be provided within 30 days of the publication of this Notice in the **Federal Register**. Comments and requests for a hearing are due 60 days from the date of publication of this Notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Charles S. Edelstein of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 26th day of June, 1995.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

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BILLING CODE 4510–29–P

[14] The Department notes that the decisions to acquire and hold the GIC are governed by the fiduciary responsibility provisions of Part 4, Subtitle B, of Title I of the Act. In this regard, the Department is not herein proposing relief for any violations of Part 4 which may have arisen as a result of the acquisition and holding of the GIC by the Plan.

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act

SUMMARY: Notice is hereby given that the National Science Foundation (NSF) has received a waste management permit application from Adventure Network International (ANI) associated with touristic activities at several locations in Antarctica, submitted to NSF pursuant to regulations issued under the Antarctic Conservation Act of 1978.